STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF	)	
	)	
Jerome W. Mitchell,	)	
Complainant	)	
	)	**CHARGE NO.: 1993 CF1245**
and	)	**EEOC NO.: 21B 930341**
	)	**ALS NO.: 9488**
	)	
State of Illinois, Department of Corrections,	)	
Respondent	)	

RECOMMENDED ORDER AND DECISION

This matter comes before me on Complainant's Fee Petition and Cost Petition ("Petition"), filed on April 26, 2002, which was submitted after the entry of a Recommended Liability Determination ("RLD") on February 5, 2002. In accord with leave granted in the RLD, Respondent filed a Motion for Settlement Setoff ("Motion") on March 12, 2002, which was briefed by the parties. This Recommended Order and Decision ("ROD") incorporates the RLD in its entirety as the recommendation on the merits of the case and will add my further recommendation of the amount of attorney's fees and costs to be awarded to Complainant.

Findings of Fact

1. Complainant, Jerome W. Mitchell, is entitled to attorney's fees and costs in accord with the RLD entered in this case on February 5, 2002.

2. Ayesha S. Hakeem, Complainant's counsel, is an attorney with 15 years of experience who practices as a sole practitioner in downtown Chicago. Ms. Hakeem was admitted to practice in Illinois in 1987.

3. A reasonable hourly rate for an attorney of Ms. Hakeem's experience is $180.00 per hour.

4. Ms. Hakeem reasonably expended 453.62 hours at the rate of $180.00 per hour in representing Complainant before the Commission in this matter (subject to setoff as indicated below). In addition, Ms. Hakeem reasonably expended the amount of $2,574.39 on other costs associated with this matter.

5. Prior to the commencement of the public hearing in this matter, Complainant settled his claim against his co-employer at the time of the incident alleged in the complaint, Prison Health Services ("PHS"), and PHS was dismissed from this action.

6. In accord with the settlement agreement with PHS, Complainant received $18,000.00. Based on an understanding between Complainant and Ms. Hakeem, this entire amount was applied against the accumulated attorney fees related to the prosecution of this case.

7. The Petition is revised to reflect the reasonable and just amount of time required by Complainant's counsel to obtain the recommended decision on liability and damages stated in the RLD. The details of the reductions are found in the discussion below in this ROD.

Conclusions of Law

1. The petition for attorney's fees and costs is granted in part and denied in part.

2. No hearing is necessary to determine a reasonable attorney's fee award in this case.

3. A portion of the $18,000.00 settlement received by Complainant from PHS is allowed as a setoff against the fees recommended for Complainant's counsel in that Complainant consented to the payment of the entire settlement amount to his attorney. The net amount of the setoff is shown below in this Recommended Order.

Discussion

In considering petitions for the award of attorney's fees and costs, the Commission requires that any award be fair and reasonable. The most common measure of fees remains the charging of a set rate per hour for work performed in consideration of the client's matter at hand, and multiplying

that figure by the number of hours expended. This is particularly useful when a fee award such as that for the present case is being considered because it gives the Commission an opportunity to be informed of the actual work devoted by the attorney to the case. The standard for determining a proper fee award by the Commission is found in Clark and Champaign National Bank, 4 Ill. H.R.C. Rep. 193 (1982).

In this case, Complainant's counsel, Ayesha S. Hakeem, achieved an excellent result for her client in a case that was more difficult to present at public hearing and successfully argue in the post-hearing stage than the average Commission case. The "co-employer" legal issue presented by this case was unusual, but not unique or groundbreaking, and the failure of Respondent to identify a decision-maker required Complainant to develop and advance an argument that is again rare but not unknown. The RLD for this matter recommends that the award to Complainant include the payment of attorney's fees and costs. Ms. Hakeem has taken the opportunity presented in the RLD and submitted a Petition that is awesomely detailed. Paradoxically, however, Ms. Hakeem failed to provide the Commission with the information that its precedents clearly set out in order to establish a fair hourly rate. Further, the precedents are also ignored with regard to the time reasonably required to accomplish certain tasks that are routinely encountered in the prosecution of any case that comes before the Commission. I cannot, as urged by Respondent, find that Ms. Hakeem has done these things in order to obtain an award of attorney's fees and costs to which she is not entitled. Rather, I do find that Ms. Hakeem should receive just what the Human Rights Act ("HRA"), the rules and the Commission's longstanding practice allows, a fair and reasonable fee, and no more. This will require a substantial downward modification of her request in accord with the discussion below.

A. Setoff for Settlement with PHS

Note: Complainant's counsel submitted a "Statement of Legal Services Rendered on Behalf of Dr. Jerome W. Mitchell" ("Statement") in conjunction with her Petition. The Statement is 93 pages in length and consists of 1,277 individual line items. To assist in identifying each line item, a numbering system has been imposed on this document, with each line item being numbered consecutively within the calendar year (96-001, 96-002, et al.). Additional guidance for integrating this index system with the Statement is included as an Addendum to this ROD.)

Paragraph H of the recommended award included in the RLD entered on February 5, 2002 gave the parties the opportunity to present argument on the issue of a setoff for any payment of money that was included in the settlement agreement between Complainant and PHS. *See* Thorne and Illinois Department of Veterans' Affairs, Ill. H.R.C. Rep. (1990CF1159, March 22, 1996). Subsequently, on March 12, 2002, Respondent filed its Motion for Settlement Setoff ("Motion"). The Motion recited that Complainant received $18,000.00 from PHS as an element of the settlement between those parties. A copy of the settlement agreement, obtained under subpoena from PHS by Respondent, was attached to the Motion and confirmed the amount paid.

Complainant responded to the Motion on March 25, 2002 by stating that it should be denied because the $18,000.00 received from PHS was paid to Complainant's counsel as attorney's fees. The response further asserts that the entire amount is attributable to the attorney's fees accumulated with respect to PHS alone and therefore should not be used as a setoff against any other amount awarded to Complainant. Then, on March 29, 2002, Complainant filed a supplemental response that included an affidavit from Complainant in which he states that the entire $18,000.00 was paid to his attorney "to compensate (her) for the attorney's fees incurred as a result of the prosecution of the case against Prison Health Services." Affidavit of Mitchell, March 22, 2002, Paragraph 3. He further affirmed that he did not personally receive any portion of the payment from PHS.

The Commission is mandated by the HRA to make awards to prevailing complainants that make them whole. 775 ILCS 5/8A-104(J). The Act also provides that the award made "to complainant" should include compensation for the "costs of maintaining the action, including

reasonable attorney fees." 775 ILCS 5/8A-104(G). In this case, Complainant is entitled to attorney's fees for all work that his counsel reasonably expended on his behalf, but no more. The Motion is granted, but it will be necessary to allocate the setoff between work that was done with respect to PHS alone and, if funds remain, then against the remaining attorney's fees and costs derived from the present Petition.

Determining those tasks attributable solely to counsel's work with PHS is made problematic because Ms. Hakeem chose not to include the details of her records relating to PHS with her Petition. Instead, she presumes that her assurance that the entire amount covers only work she did with respect to PHS is sufficient. This implies that she spent at least 90 hours (at her requested hourly rate of $200.00) working on tasks related to PHS alone. This presumption seems both unlikely and unreasonable. While a portion of the process that led to the settlement itself and a few other tasks that did somehow find their way into the Petition (see below) are attributable to Ms. Hakeem's efforts with PHS alone, it is not possible to attribute most other tasks undertaken in this case to PHS alone because those tasks are inextricably interwoven with the prosecution of the case in general.

For example, in its response to the Petition, Respondent asserts that the 23.5 hours claimed by Ms. Hakeem for activities related to the deposition of Dr. Owen Murray, a former employee of PHS, should be considered PHS-specific work. However, this deposition was made part of the record at the public hearing and portions of it are relevant to material issues in the liability stage of the case. This evidence, and virtually all other activities conducted by Ms. Hakeem prior to the dismissal of PHS, was relevant to the prosecution of this case in general and cannot be attributed to PHS alone in whole or in part. The suggestion by Respondent that 50% of many tasks listed by Ms. Hakeem be stricken from the Petition is neither just nor practical, and a blanket reduction on this basis will not be undertaken.

In allocating the $18,000.00 setoff, any activity that is otherwise attributable to work Ms. Hakeem did solely with or concerning PHS will be deducted and the remainder will be a setoff against the final recommended award of attorney's fees and costs arising from the Petition. In its response to the Petition, Respondent noted that 12 line items are listed comprising a total of 24.25 hours devoted to "settlement" during the period of August 19, 1998 to September 25, 1998. Response, 20-21. An examination of the record reveals that in an order entered on July 22, 1998, the Commission set a settlement conference with an ALJ for the parties on September 9, 1998. A subsequent order indicates that the settlement conference was commenced and continued first until September 23, 1998 and then to September 30, 1998. Then on October 5, 1998, Complainant and PHS indicated to Administrative Law Judge Denise A. Diaz that they had reached a settlement. Complainant was required to file a motion for voluntary dismissal ("MVD") regarding PHS by October 26, 1998, the date set for the beginning of the public hearing. The MVD was filed on October 14, 1998 and the order dismissing PHS was entered on October 23, 1998.

It is apparent that the settlement process leading to the voluntary dismissal of PHS was the product of a sequence of events that is often encountered in cases before the Commission. While there were undoubtedly private discussions between Complainant and PHS, it cannot be said that the entire settlement process was directed at PHS alone or that it was somehow carried out in a secret or mysterious manner as is implied in the response. The Commission encourages settlement and the time devoted to it in good faith will not be considered ill spent even if the case is not concluded by settlement with all respondents in the end. And here, one of the parties did settle with Complainant, contrary to Respondent's assertion that the settlement process was "unproductive."

I find that three hours is a reasonable amount of time to attribute to the portion of negotiations devoted by Complainant to PHS alone. Consequently, $540.00 will be deducted from the $18,000.00 settlement amount as being attributable to PHS alone. Further, I find that 17 line

items in the Petition totaling 13.5 hours are also attributable to PHS.[1] Therefore, an additional $2,430.00 also will be deducted from the $18,000.00, leaving a net amount of $15,030.00 which will be applied as a setoff against the final amount of attorney's fees recommended for Ms. Hakeem in this ROD. The objection of Respondent to the hours devoted by Complainant to settlement in August and September, 1998 is otherwise overruled.

B. Complainant's Fee Petition and Cost and Expense Accounting

The appearance of Attorney Ayesha S. Hakeem in this matter was filed with the Commission on July 29, 1996 after the Department of Human Rights filed the complaint on July 9, 1996. It is not clear from the file if Complainant was represented by counsel prior to the appearance of Ms. Hakeem, but there is no claim for fees pending from any attorney for service prior to the filing of the complaint and no award is requested for that period. The separate "statement of legal services rendered on behalf of Dr. Jerome W. Mitchell" (see note above) submitted with the fee petition begins with an entry on July 20, 1996 for the initial meeting between Complainant and counsel, and, as previously noted, contains some 93 pages with 1,277 line items, 562 of which are for the minimum time increment employed by Ms. Hakeem of one-quarter of an hour (.25 hours). The summary on page 93 of the statement states that counsel expended 1,112.25 hours on this matter and, at her requested hourly rate of $200.00, the total amount sought is $222,450.00.

Hourly Rate -- The first step of the process is to determine the proper hourly rate for Complainant's counsel. The Commission's standard is to identify the prevailing community rate for lawyers with a level of experience similar to that of the petitioning attorney. Respondent asserts that Ms. Hakeem's Petition is defective in that it does not provide enough information to set her hourly rate in accord with the Commission's procedures. The suggested consequence of this is to

[1] The line items that are attributable to PHS include: **96-022**, 9/15/96, 1.50 hours; **96-023**, 9/15/96, .50 hours; **96-024**, 9/15/96, .50 hours; **98-0160**, 8/19/98, .50 hours; **98-0168**, 8/19/98, .50 hours; **98-0557**, 10/12/98, 1.25 hours; **98-0562**, 10/14/98, .75 hours; **98-0563**, 10/14/98, 1.00 hours; **02-005**, 3/10/02, .50 hours; **02-006**, 3/10/02, .50 hours; **02-007**, 3/10/02, .25 hours; **02-008**, 3/10/02, 1.50 hours; **02-009**, 3/11/02, .75 hours; **02-010**, 3/19/02, .50 hours; **02-011**, 3/19/02, .50 hours; **02-014**, 3/19/02, .50 hours; and, **02-018**, 3/29/02, 1.00 hours.

deny the Petition in its entirety and award counsel nothing. However, the long-standing principle applied by the Commission is that even in the absence of the preferred supporting information to establish the prevailing community rate, it "may properly rely on its own experience in determining a reasonable fee award." Raymer and Woodward Governor Company, 8 Ill. H.R.C. Rep. 21, 23 (1983), *reversed on other grounds*, Woodward Governor Company v. Human Rights Comm'n, 139 Ill.App.3d 853, 487 N.E.2d 653, 93 Ill.Dec. 828 (2nd Dist. 1985). Therefore, the Petition will not be denied on this ground.

Along with her reply, Ms. Hakeem filed a supplemental affidavit on June 14, 2002. However, in neither her original affidavit nor the supplemental affidavit does Ms. Hakeem provide details of her experience in the field of employment law or in practice before the Commission. She also submitted a document titled "Exhibits in Support of Complainant's Reply to Respondent's Opposition to Complainant's Fee Petition and Costs Petition." There are 10 exhibits included in this document. Exhibits A, B and C relate to Ms. Hakeem's representation of another client in an EEOC matter before the U.S. District Court for the Northern District of Illinois; the only information in these documents that is relevant to the current Petition is that Mr. Ferguson executed a "contract for legal services" in 1997 with Ms. Hakeem that included agreement on an hourly rate of $175/$200 (out-of-court/in-court?) to be applied if the contract was canceled prior to the conclusion of that case. Exhibits D, E and F appear to be computerized billing statements for two lawyers at the firm of Mayer, Brown, Rowe & Maw for their work in an EEOC matter. Ms. Hakeem submits these to illustrate that the attorney's listed on those pages are just as "efficient" in their practice as she is and that they bill in quarter-hour increments. However, nothing in the Mayer, Brown statements contribute to an understanding of the basis for the rates charged by those attorneys and there is no information in them otherwise applicable directly to Ms. Hakeem and this Petition. Exhibits G, H, I and J are all documents from Hayes and Chicago Police Department, ALS #8290, a Commission case in which it appears that respondent requested an award of fees as a

sanction against Ms. Hakeem, who represented the complainant in that case. It is not clear how the affidavits of the respondent's counsel in that case contribute to an understanding of the hourly rate that should be granted to Ms. Hakeem in this case. None of these exhibits will be given weight in the setting of Ms. Hakeem's hourly rate for this case.

There is also no information in her petition, such as the affidavits of other practitioners prepared on her behalf regarding her work in this matter or in the field of employment law, that would assist in an analysis of the prevailing community standard with regard to attorneys with her level of experience. Therefore, although the fee petition will not be denied in its entirety, as indicated above, I am left with the need to discern an hourly rate that is fair and reasonable based on the Commission's past experience.

When all of the material about Ms. Hakeem that is available to me is evaluated, the only facts relevant to setting an hourly rate are: a) that Ms. Hakeem has 15 years of experience as an attorney, including employment as an associate at two large Chicago area law firms; it is not known if her work with these firms was in the field of employment law; b) that her professional efforts produced a successful outcome in this matter for Complainant; and, c) that a check of Commission cases reported in LEXIS indicates that Ms. Hakeem was an attorney of record in at least seven cases during the period 1993 to 2001 (attorneys are not listed for all decided Commission cases). From these sparse facts, I conclude that Ms. Hakeem is an experienced attorney with some background in the field of employment law who has devoted at least a portion of her practice to cases before the Commission since 1993.

None of the five cases cited by Respondent in its response to the Petition are helpful in determining a reasonable hourly rate for this attorney as the rates awarded in those cases were all dependent on case- or attorney-specific factors such as the failure of the opposing party to object to the requested hourly rate. Response at 4-5. In cases recently decided by the Commission involving attorneys in downtown Chicago, counsel with exceptional resumes and two or more decades of

experience in the field of employment law are now being awarded hourly rates of $250 per hour. Further, counsel with little or no experience are being awarded $150 per hour. I find that given the minimal information provided by Ms. Hakeem, but recognizing that she has practiced consistently before the Commission for at least the past nine years and that her preparation, advocacy and argument in this more difficult than average case was effective, the hourly rate that is appropriate for her is $180.

Current v. Historical Hourly Rate -- Respondent also objects to the application of counsel's current hourly rate to the hours worked earlier in the history of this case. In Smith and Professional Service Industries, Inc., Ill. H.R.C. Rep. (1987CN1189, May 7, 1993), the Commission held that the current reasonable rate to which an attorney is entitled is the proper rate to be applied to the full fee request, absent an increase in the attorney's standard fee for a reason other than the natural operation of economic forces over time, such as the increase in billable rates that occurs when an associate becomes a partner in a law firm. The Commission stated in Smith that "there is a loss of the opportunity to use the money during that time period, as well as diminution of the value of that money due to inflation." This rationale is particularly appropriate when the petitioner is a sole practitioner such as Ms. Hakeem. Therefore, Ms. Hakeem is entitled to receive the current reasonable value of her services, *i.e.*, $180.00 per hour, for the entire time period during which this matter was pending.

Once the hourly rate is set, it is necessary to examine the tasks for which the petitioning attorney is requesting compensation. Again, Ms. Hakeem has submitted a 93-page listing of legal services performed on behalf of Complainant in pursuit of this case. The total number of hours shown in this document is 1,112.25. Respondent objects to some listed tasks in their entirety and for others, maintains that even where the task was otherwise reasonably undertaken, the number of hours devoted to it were excessive.

Effect of Contingent Fee Agreement -- Respondent also notes that Complainant and Ms. Hakeem apparently executed a contingency fee agreement, although a there is no copy of it presently available. However, the existence of such an agreement is moot in that Ms. Hakeem has opted to accept the attorney's fee awarded by the Commission instead of seeking to enforce any contingency agreement. She affirmed this course of action in her affidavit of June 11, 2002. Hakeem Affidavit, June 11, 2002, Paragraph 11. The Commission recognizes that it cannot regulate private agreements between counsel and client, but it will not permit an attorney to receive "windfall" compensation from both an award by the Commission and payment under a contingency arrangement. Where the attorney affirmatively waives the right to collect under the contingency agreement, as Ms. Hakeem has done here, the Commission will allow the entry of an award for a full, fair and reasonable attorney's fee. *See* York and Al-Par Liquors, Ill. H.R.C. Rep. (1986CF0627, June 29, 1995).

Specific Objections to Tasks and Hours Claimed in the Petition -- Respondent asserts that the fees requested in the petition are "greatly disproportionate to the relief obtained for the Complainant and therefore excessive." However, the present case is distinguishable from the cases cited by Respondent in its response to the Petition. In Farrar v. Hobby, 506 U.S. 103 (1992), Walsh and Continental Pipe Products Mfg. Co., 38 Ill. H.R.C. Rep. 272, 295 (1988) and Hensley v. Eckerhart, 461 U.S. 424 (1983), the party requesting fees prevailed on only some of the substantive allegations of discriminatory behavior for which relief was requested. As indicated in these cases, the Commission will deny a portion of the requested attorney's fees and costs where the complainant has failed to prevail on a significant substantive count or issue in the complaint. But here, Respondent makes the somewhat surprising assertion that because the Complainant and PHS reached a settlement prior to the public hearing, Complainant was "unsuccessful" in prosecuting his claim against PHS and is therefore not entitled to an award of a full and fair attorney's fee and costs.

First, this proposition presumes that the case against PHS is somehow separable from the case against this Respondent. As demonstrated in the discussion above concerning setoff, this is simply not accurate. If the elements of proof applicable to each co-employer in this matter (*i.e.*, Respondent and PHS) could be reduced to a transparent schematic illustration, each would fit precisely over the other, with only a few stray bits of inconsequential material not being congruent with any piece of evidence applicable to the other co-employer. There was no "unsuccessful" prosecution against PHS. PHS merely (correctly) read the tea leaves and cut its losses by settling. This does not constitute a lack of success on the part of Complainant and this settlement is not prejudicial to his request for attorney's fees and costs against the remaining Respondent.

At public hearing against this Respondent, Complainant prevailed on the issue of liability. With regard to damages, the only element of relief for Complainant requested in the complaint that was not included in the final award was for emotional distress damages. This was the same issue on which the complainant in Walsh did not prevail. Ultimately, the requested attorney's fees in Walsh were granted because it was determined that because the issue of emotional distress and the issues present in the case as a whole were so intimately intertwined, it was not possible to "divide the hours on a claim by claim basis." Walsh, *id*. The decision goes on to state that "(i)n a situation where the results achieved are excellent, the attorney should be fully compensated." Walsh, *id.*, citing Hensley, *supra*, at 435. In the present case, the result for Complainant can certainly be characterized as "excellent" as Complainant prevailed on all of the major issues of his case and was given significant relief in addition to the award of attorney's fees, including the direction to Respondent to cease and desist from any future discrimination.

To the Commission, vindication of a civil rights principle, as was achieved here, is more significant than an award of money, justifying the payment of a full, reasonable attorney fee where minimal damages have been awarded (which is not true in the present case), or even in the absence

of any monetary award at all. Brewington v. Illinois Department of Corrections, 161 Ill.App.3d 54, 68, 513 N.E.2d 1056, 112 Ill.Dec. 447 (1st Dist. 1987).

Review and Deletion of Specific Line Items

a. *Compilation of Complainant's "Exhibit List"* -- As Ms. Hakeem went through the process of reviewing documents, consulting her client about them and identifying those that were to be included on the list of exhibits for public hearing, she made a series of entries in her statement log that are illustrated by the following example:

98-0135	8-17-98	Review Mitchell Memo to "Pauline John" dated February 18, 1994, regarding his evaluation. (Complainant's Exhibit CX-9)	.50
98-0136	8-17-98	Discussion with Client regarding Mitchell Memo to "Pauline John" dated February 18, 1994, regarding his evaluation. (Complainant's Exhibit CX-9)	.50
98-0137	8-17-98	Addition of Mitchell Memo to "Pauline John" dated February 18, 1994, regarding his evaluation to Complainant's Exhibit List. (Complainant's Exhibit CX-9)	.25

This series of entries, which is repeated in substantially the same sequence over 150 times through the entire statement log, indicates that one hour and a quarter are being billed for the handling of this one exhibit. Interspersed among these serial entries are 29 other entries during the period that ended six weeks prior to the public hearing similar to the following:

98-0134	8-17-98	Research file; review documents and discovery to identify trial exhibits and prepare for trial	2.25

Thus, even before charging for handling the exhibits individually, Ms. Hakeem also billed for a more general period of time used to examine and cull documents from the pool of potential exhibits. This means that some intellectual process was involved in evaluating and choosing the documents that were then subjected to the additional individual handling noted above.

In the final analysis, it is not productive for me to second-guess the relative merits of the time devoted to each exhibit. However, one category among the serial entries is open to question, namely that which is represented above by line item *98-0137*, *i.e.*, those which speak of "adding" the subject document to Complainant's list of exhibits. There are 171 such line items in the statement, constituting a total of 63 hours. Of these, 107 took place before the commencement of the public hearing, for a total of 47 hours, and 64, all entered at the minimum rate of one-quarter hour, occurred after the public hearing commenced for a total of 16 hours. At best, the act of "adding" an item to a list of exhibits is a clerical task that does not require any professional service on the part of the attorney. Sufficient time for all professional services related to the exhibits, such as "drafting trial notes," are shown under the other typical entries as identified above. Therefore, all of the pre-hearing "addition" line items will be deleted from the statement and the 47 hours will not be included in the calculation of the recommended attorney fee. The 64 hearing-related items will not be deleted because many of the exhibits involved were not made available to Complainant until just before or after the hearing began, justifying additional scrutiny and handling by the attorney, but these will be subject to the general reduction in hours related to the quarter-hour increment issue and the overall reduction in hours allowed for review of documents that are both discussed below.

b. *Respondent's objections to specific line item entries* -- The following objections of Respondent are sustained and the line items indicated will be stricken from the statement for computation of the fee award:

- *Clerical tasks.* All line items which list "filing" and other clerical tasks are not eligible for compensation at the attorney's rate for professional services. The line items involved and the amount of time listed for each are: *96-014*, 7/14/96, .50 hours; *96-036*, 10/28/96, 1.25 hours; *96-038*, 10/28/96, .50 hours; *97-028*, 11/3/97, 1.00 hours; *97-029*, 11/3/97, .75 hours; *97-030*, 11/3/97, .50 hours; *97-031*, 11/3/97, .50 hours; *98-0068*, 7/22/98, 2.50 hours; *98-0552*, 10/9/98, .75

hours; *98-0642*, 10/23/98, 1.50 hours; *99-002*, 1/14/99, 2.25 hours; *99-007*, 2/16/99, 1.00 hours; and, *99-008*, 2/16/99, 1.00 hours. Thirteen line items are deleted for a total of 14.00 hours.

- *Certain line items regarding the drafting of cover letters.* The line items involved and the amount of time listed for each are: *98-0024*, 5/6/98, 2.50 hours; *98-0554*, 10/9/98, .50 hours; *98-0555*, 10/9/98, .75 hours; *98-0571*, 10/16/98, .50 hours; and, *98-0573*, 10/16/98, .75 hours. Five line items are deleted for a total of 5.00 hours.
- *Activities directed to filing documents to correct "Schribner's error" (sic).* This apparently refers to the need for Complainant's attorney to correct a scrivener's error rather than an error by Schribner, the venerable publishing house. In that this denotes an error in drafting by the attorney, it should not be charged to the client or to a party otherwise required to pay the attorney's reasonable fee. Therefore, the following entries related to this task are deleted: *99-131*, 7/16/99, 1.00 hours; *99-132*, 7/16/99, .50 hours; and, *99-133*, 7/16/99, .50 hours. Three line items are deleted for a total of 2.00 hours.
- *Billing for October 31, 1998.* Line item *98-0759* lists 5.50 hours for "(p)reparation and attendance at hearing, taking testimony, developing witness outlines; conference with client and review of documents." In its response to the Petition, Respondent points out that there was no session of the public hearing on October 31st in that it was a Saturday. Complainant does not dispute this detail, but does assert that it was "merely a typographical error." Line item *98-0758* (2.00 hours on 10/31/98) includes many tasks that would be appropriate for preparation on a non-trial date in the midst of a public hearing. There are also over 10 hours of other activities consistent with trial preparation listed for

10/31/98. I cannot conclusively find that the inclusion of *98-0759* was done to "pad" the statement or otherwise deceive the Commission, but I do note Ms. Hakeem's admission that it was inserted inadvertently. This error does not equate with the egregious attorney conduct described in Lasko and Chicago Housing Authority, Ill. H.R.C. Rep. (1989CF1220, October 26, 1999), *affirmed,* Chicago Housing Authority v. Human Rights Comm'n, 325 Ill.App.3d 1115, 759 N.E.2d 37, 259 Ill.Dec. 557 (1st Dist. 2001), a case cited by Respondent in support of its suggestion that this error taints the credibility of the entire Petition. Therefore, I will strike line item *98-0759* only and deduct 5.50 hours from the Petition.

Adjustment Due to Rounding Up in Quarter-Hour Increments

Next, I will address a convention utilized by Ms. Hakeem in documenting her time. This is her practice of rounding up her time in quarter-hour increments. In her amended affidavit filed on June 14, 2002 as part of her reply regarding the Petition, Ms. Hakeem notes that she was required at both of the large law firms by which she was employed early in her career to keep her time records in minimum blocks of a quarter-hour. Hakeem Affidavit, June 14, 2002, Paragraphs 4-6. The Commission previously has considered the use of quarter-hour increments both favorably and unfavorably. In Rhodes and Jones-Blythe Construction Company, 23 Ill. H.R.C. Rep. 289, 311-13 (1986), Administrative Law Judge (now federal district judge) Rebecca Pallmeyer, in a recommended order affirmed by the Commission, found that rounding time records upward in quarter-hour increments is not "so contrary to acceptable practice as to result in an award of attorney's fees which is far greater than the amount which would be paid by a willing client for the same or similar services." Rhodes at 311-12. In Rhodes, Attorney Mary Lee Leahy, who even in 1986 was a highly regarded practitioner in the employment law field, requested compensation for 73.50 hours of work at an hourly rate of $100.00.

A contrary view was expressed in Moore and City of Mt. Vernon, Ill. H.R.C. Rep. (1982SF0153, June 29, 1995; *affirming recommended decisions entered* April 30, 1984 and February 8, 1985), again a case in which the Commission accepted the recommendation of the administrative law judge on this subject. It states that the quarter-hour increment method of timekeeping "results in an inflated billing time." The administrative law judge then deducted 7.5 minutes from each entry in the attorney's time log to arrive at a more fair and accurate time allocation. It was recognized that this was not "absolutely accurate," but that the burden of any inaccuracy should fall on the attorney who submitted the flawed records. In Moore, Attorney Noel Stallings requested compensation for 70 hours (reduced to 32-7/8 hours out-of-court and 7 hours in-court after this and other adjustments) payable at hourly rates of $60 and $75 for out-of-court and in-court services respectively.

Given the number of hours and low hourly rates involved, it may seem that the close examination of the quarter-hour increment issue was picayune in both of the Commission cases cited above. However, the issue takes on more significance in the present case when it is noted that Ms. Hakeem's billing record is comprised of 1,277 line items (before any of the adjustments made in this ROD), each of which is presumably rounded up to the next quarter-hour. This can represent a total of up to 319.25 hours, 28.7% of the 1,112.5 hours claimed in the petition, with a potential value of $63,850.00 (an amount significantly higher in itself than the average award for attorney's fees allowed by the Commission) at Ms. Hakeem's original requested hourly rate of $200.00. After all of the adjustments made above in this ROD, there are 1,131 line items remaining (comprising 1,025.25 hours), representing a total of up to 282.75 hours attributable to rounding up. Thus, applying the formula used by the Commission in Moore, 141.38 hours shall be deducted from the hours remaining in the Petition, leaving 883.87 hours still under consideration at this point. At $180.00 per hour, this is a gross sub-total of $159,096.60 as attorney's fees.

Review and Reduction in Hours for Certain Tasks

There is another category of objections raised by Respondent that are identified by task rather than by specific line item. In these instances, Respondent notes that a certain number of hours in total have been devoted to a particular task, and asserts that the hours claimed are excessive and unreasonable. I find that some of these objections are well taken and they will be allowed as noted below. Instead of designating specific line items that will be deleted, a specific number of hours devoted to the task will be deducted and the appropriate dollar amount will be subtracted from the gross sub-total of attorney's fees indicated above. Please note that because Complainant did not refute any of Respondent's asserted figures for total hours devoted to the disputed tasks, those numbers are accepted as accurate for the purposes of this section. Further, the reductions noted below are made with recognition that some reductions in these categories have already been entered previously in this ROD.

- *Continuances and Requests for Extensions.* Respondent states that Complainant requested seven continuances or requests for extensions of time during the pendency of this matter, consuming a total of 26 hours. While I believe that requests of this nature are a normal and expected element of legal practice, and therefore will not be stricken in full, the number of hours claimed for this activity is excessive. Complainant will be given 1.50 hours for each instance of a request for continuance or extension, a total of 10.50 hours. The remaining 15.50 hours will be deducted from the gross sub-total of hours now remaining in the Petition.
- *First Joint Pre-Hearing Memorandum.* Respondent indicates that Ms. Hakeem is requesting payment for 80 hours of work on the original 23 page joint pre-hearing memorandum. Respondent cites Lynch and Cook County Hospital, Ill. H.R.C. Rep. (1993CA0598, June 30, 1999) as an example where the request of 20 hours to prepare a 14-page memorandum was reduced to 10 hours.

A close reading of Lynch indicates that it was a straightforward case requiring only a one-day public hearing. The memorandum in the present case was more involved and it was the blue print for a nine-day public hearing. However, I find that 80 hours is excessive and the compensible time will be reduced to 30 hours. The remaining 50.00 hours will be deducted from the gross sub-total of hours now remaining in the Petition.

- *Reviewing and Preparing Documents.* Respondent also asserts that Complainant claims 577.25 hours for reviewing documents. It maintains that this case "is really not about documents" and that because Complainant cited few documents in his briefing, "his case relied entirely upon testimony of witnesses." Response at 15-16. I find this characterization to be disingenuous. Both documentary and testimonial evidence contributed to the recommendations made in the RLD. In order to seek and obtain the admission of those documents that eventually were used for this purpose, Ms. Hakeem had to peruse hundreds of pages of manuals, directives and other documents produced by Respondent, many made available during the public hearing itself. Yet, even though a substantial amount of time can be credited to Ms. Hakeem for the purpose of reviewing documents, the amount claimed here is excessive. Therefore, the compensible time for review of documents will be reduced to 350.00 hours. The remaining 227.25 hours will be deducted from the gross sub-total of hours now remaining in the Petition. This reduction specifically does not include any of the time required for review of documents during the period of time encompassing the public hearing in that Respondent's own conduct or the exigencies of the litigation process beyond Ms. Hakeem's control gave rise to the need for extensive review of documents during that period.

- *Post-Hearing Briefing.* Respondent states that Complainant is requesting compensation for 197.50 hours for post-hearing briefing, including 71 hours for research and drafting of Complainant's initial brief and 126.5 hours for the reply brief. While Respondent maintains that the three major issues in this case – "employee status, prima facie case and damages" – are merely garden variety, I have noted previously that this is not precisely true, at least with regard to "employee status" and "prima facie case." While the issues in this case were neither "unique or groundbreaking" as I have noted earlier in this ROD, there were nuances to both of these issues that do justify a more extensive intellectual pursuit on the part of the attorneys involved than would a truly routine, straight forward case. Respondent suggests that the total time allowed for the briefs be reduced to 20 hours, while citing other Commission cases where up to 43.92 hours were allowed for the post-hearing briefs. While I find that a reduction in hours is justified, 20 hours would not reflect the level of difficulty this case presented. The compensible time will be reduced to 60 hours. The remaining 137.50 hours will be deducted from the gross sub-total of hours now remaining in the Petition.

The reductions in this section total 430.25 hours. The gross sub-total of hours remaining in the Petition following reductions made earlier in this ROD is 883.87 hours. Therefore, after subtracting 430.25 hours, it is recommended that Ms. Hakeem receive compensation for 453.62 hours at the rate of $180.00 per hour, a total of $81,651.60. This amount must be reduced further by the setoff of $15,030.00 established in this ROD, leaving a recommended net award of $66,621.60 as attorney's fees to Ms. Hakeem.

Costs

Ms. Hakeem has also included a request for reimbursement of $4,664.24 as costs associated with the prosecution of this case. Respondent objects to two categories of costs reflected in the statement. These are copying costs and charges for the services of Jay S. Cohen, R.Ph., J.D.

Copying -- Generally, copying costs are not reimbursed by the Commission because it is presumed that this expense is included in the regular overhead for the operation of the attorney's office. This presumption can be overcome if the petitioning attorney can establish that other clients are also billed for this expense in the due course of business. In her reply, Ms. Hakeem states that ".10 per page is the customary cost that (she) charges for in house copying." Complainant's Reply 25. This statement alone, however, does not establish that counsel routinely bills her clients for this cost. Therefore, the charges for copying done on 10/5/98, 10/15/98, 10/16/98, 10/21/98 and 10/26/98, totaling $226.00 will be disallowed. However, the expenses shown in the cost statement for copying the transcripts of the proceedings in this matter will be allowed. The Commission views the expense for obtaining a copy of the transcript directly from the court-reporting agency as being a reasonable expense for the purpose of reimbursement. Patrick and City of Centralia, Ill. H.R.C. Rep. (1990SF0160, November 16, 1999). The cost of a transcript from this source greatly exceeds the cost of copying the Commission's copy of the transcript. Therefore, the expense for copying the public hearing transcript of 1,564 pages at $.10 per page ($156.40) will be allowed. This is a reduction from the $192.10 recorded in the cost statement for copying the "Report of Proceedings of Hearing."

Professional Services for Research -- Ms. Hakeem includes a total expense of $3,597.45 for the assistance of Mr. Cohen with "legal research," although Respondent's response objects only to the $1,828.75 requested for his services rendered on "March 4th, 15th, and 19th in 1999." Respondent's Response 25. There is another entry regarding Mr. Cohen in the cost statement for 2/17/99 in the amount of $1,768.70. In that this entry immediately precedes the questioned entry

for 3/4/99 and could not have escaped the examination of Respondent, I must assume that, for whatever reason, Respondent is not objecting to this entry. Therefore, I will allow the 2/17/99 entry on this basis alone. The questioned line items clearly indicate that Mr. Cohen was paid for "professional services" related to "Legal Research; on line and manual." However, there is no bill, invoice, statement or affidavit from Mr. Cohen indicating anything about his own qualifications, hourly rate, hours worked or the tasks that he accomplished at the direction of Ms. Hakeem. There is no appearance on file for Mr. Cohen and there is no other indication that he assumed professional responsibility for the overall prosecution of Complainant's cause before the Commission. Due to the lack of adequate information to fully evaluate the validity of these entries, they will be disallowed in their entirety, a total of $1,828.75. Please note that this reduction does not signal that counsel for complainants before the Commission are forced to "go it alone" without the assistance of second-chair or assisting counsel. *See* Rooks and Wilk Communications/Young & Rubicam, Inc., Ill. H.R.C. Rep. (1993CF0447, March 13, 2001). Instead, it was only the lack of the information indicated that forecloses the inclusion of the disputed line items in the recommended award for costs.

No objection is registered by Respondent to the remaining three entries in the cost statement, representing a total of $649.29. Further, they appear to be reasonable on their face and not in conflict with the Commission's standards regarding permissible costs. These will be allowed as stated. In summary, it is recommended that Ms. Hakeem receive a total of $2,574.39 for the allowable costs associated with the prosecution of this matter.

Recommendation

Based on the foregoing, it is recommended that an order be entered awarding the following relief to Complainant:

A. That Respondent's Motion for Settlement Setoff be granted in part, with $15,030.00 being applied against the award of the recommended gross

amount of allowed attorney's fees noted in the text of this Recommended Order;

B. That Respondent be ordered to pay to Ayesha S. Hakeem the amount of $66,621.60 as the net amount of her allowed attorney's fees (including the deduction required under Paragraph A above), and $2,574.39 as reimbursement for allowed costs associated with the prosecution of this matter, a total of $69,195.99.

C. That Complainant receives all other relief recommended in the Recommended Liability Determination entered in this matter on February 5, 2002.

HUMAN RIGHTS COMMISSION

ENTERED:

October 3, 2002

BY: _____
DAVID J. BRENT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ADDENDUM

TABLE OF CONTENTS
FOR "STATEMENT OF LEGAL SERVICES RENDERED ON BEHALF OF DR. JEROME W. MITCHELL"
(As Submitted by Ayesha S. Hakeem on April 26, 2002)

Note: Complainant's counsel submitted this document conjunction with her Fee Petition. The Statement is 93 pages in length and consists of 1,277 line items. To assist in identifying the individual line items, a numbering system has been imposed on this document, with each line item being numbered consecutively within the calendar year (96-001, 96-002, et al.). The chart below shows the range of line item numbers included on each page of the Statement.

ALJ Assigned Line Item Numbers:	**Found on Page:**
98-0811 to 98-0823	64
98-0824 to 98-0834	65
98-0835 to 98-0846	66
98-0847 to 98-0860	67
98-0861 to 98-0876	68
98-0877 to 98-0891	69
98-0892 to 98-0906	70
98-0907 to 98-0917	71
98-0918 to 98-0927	72
98-0928 to 98-0936	73
98-0937 to 98-0951	74
98-0952 to 98-0967	75
98-0968 to 98-0981	76
98-0982 to 98-0992	77
98-0993 to 98-1004	78
98-1005 to 98-1014; 99-001 to 99-004	79
99-005 to 99-016	80
99-017 to 99-029	81
99-030 to 99-039	82
99-040 to 99-055	83
99-056 to 99-069	84
99-070 to 99-081	85
99-082 to 99-093	86

ALJ Assigned Line Item Numbers:	**Found on Page:**
99-094 to 99-104	87
99-105 to 99-114	88
99-115 to 99-124	89
99-125 to 99-138	90
99-139 to 99-144; 00-001 to 00-011	91
00-012 to 00-017; *[No items listed for 2001]*; 02-001 to 02-011	92
02-012 to 02-018	93

Service List for Mitchell #9488 as of 10/3/02:

Ayesha S. Hakeem
Law Offices of Ayesha S. Hakeem
P.O. Box 19728
Chicago, Illinois 60619

L. Rachel McKenzie
Legal Counsel
Illinois Department of Corrections
100 West Randolph Street
Suite 4-200
Chicago, Illinois 60601

Jacqueline S. Lustig
General Counsel
Illinois Department of Human Rights
100 West Randolph Street
Suite 10-100
Chicago, Illinois 60601